IFW 3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE THE APPLICATION OF: PAPER:
Inventor : Mitchell R. Swartz Group Art Unit: 3641

Serial no. 09/750, 480 Examiner: R. Palabrica

Filed: 12/28/00
For: **METHOD AND APPARATUS TO MONITOR LOADING USING VIBRATION**
This is a continuation of Serial no. 07/371,937
Filed: 06/27/89

Commissioner for Patents
Alexandria, VA 22313-1450

October 19, 2004

PETITION TO THE COMMISSIONER PURSUANT TO 37 C.F.R. 1.181 FOR REFERRAL TO INSPECTOR GENERAL

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct the situation with respect to the recent Office Communication [Notice of Noncompliance, mailed September 27, 2004, regarding Appellant's Appeal Brief of the above-entitled action dated July 2, 2004; hereinafter "Notice" or "Communication"]. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable, based upon the reasons stated below and is also confirmed by the facts as discussed in the Declaration supporting this Petition of October 19, 2004, and further supported by the facts below.

2. I, Mitchell Swartz, am a citizen of the United States of America and resident of the Commonwealth of Massachusetts. I am an engineer, physician, and inventor. I received my Bachelor of Science, Master of Science, and degree of Electrical Engineer from the Massachusetts Institute of Technology ["MIT", Cambridge, MA] in 1971, and my Doctor of Science [Electrical Engineering] from MIT in 1984. I received my Doctor of Medicine from Harvard Medical School in 1979, and took postgraduate training in surgery, radiology and oncology. I am Board Certified in Therapeutic Radiology.

3. I am the inventor of several issued United States Letters Patents in the fields of chemical, electrical and biomedical engineering, including No. 4,139,348, No. 4,181,128, No. 4,243,751, No. 4,305,390, No. 4,346,172, No. 4,402,318, No. 4,407,282, No. 4,681,839, and No. 3,873,267.

4. I am the inventor of the several inventions in the fields of energy production, storage and measurement, whose applications are pending before the Office.

5. On information and belief, I have been mistreated by Examiner Harvey Behrend, Mr. Carone, Mr. Palabrica, and others under Commissioner Nicholas P. Godici, who have acted in a systematic pattern to block my inventions involving energy, even though one application was made special by the Board of Patent Appeals. To block my inventions, they have made disingenuous statements about what the inventions involved, what the pleadings have said, when the pleadings were received, what the previous Examiner in the same case said, and what the Declarants have said.

6. First, simply put, the Office's responses have been inaccurate, cut of cloth made of other than my inventions. For example, I filed application S.N. 07/371,937 (now '480) which teaches and claims an invention to measure the loading of palladium with hydrogen (which fills as a sponge fills with water). A novel vibrating electrode was monitored for its natural frequency to reveal the loading *in situ* without disturbing the reactions, which are features of great utility. My invention produced data which was published in peer-reviewed publications. Those skilled-in-the-art wrote unrebutted Affidavits and Amicus Briefs supporting the invention.

7. The Office did not act honorably and truthfully. The Office would never appropriately address my invention, and systematically called the invention "cold fusion" instead of a vibrating cathode to measure loading. The Office systematically and falsely purported the invention made "excess heat", when the words were not even used in the original specification (and continued this travesty even to the Board of Patent Appeals and the Federal Court). Furthermore, the Office systematically ignored Declarants and Exhibits proving utility, operability, novelty including usefulness for both cold fusion science and research and other purposes. To cover this up, this invention was labeled 'cold fusion' by the Office despite the fact that it was not, but was actually useful for both cold fusion and other research.

8. As another example, I filed S.N. 08-406,457 which teaches and claims a novel calorimeter (heat-measuring instrument) used to examine and characterize heat-generating metal samples and maximize their heat output. My invention produced data which was published in peer-reviewed publications. Those skilled-in-the-art wrote unrebutted Affidavits and Amicus Briefs supporting the invention. However, the Office did not act honorably and truthfully. This rejection by the Office was based upon the Office's false statements in federal documents, the Office's utter failure to address the timely-submitted Declarations and the Exhibits [~140 pounds in '457], and by the Office systematically ignoring the original specifications and claims. First, the Office would never appropriately address my invention, and INSTEAD systematically called the invention "cold fusion" instead of a novel multiring calorimeter to maximize heat output. Instead, the Office systematically falsely purported the invention made "excess heat", when the words were not even used in the original specification (and continued this travesty even to the Board of Patent Appeals and the Federal Court). Corroborating the Office's systematic ignoring of the original specification and claims, attention is directed to the fact that in the Reply Brief which the Office submitted to the Board of Patent Appeal (and later the Federal Court 02-1240, US Supreme Court 02-1565) only two sentences accurately discussed MY invention, and they were direct quotes from the original specification. Thus, to cover this up, this invention was called 'cold fusion' by the Office despite the fact that it was not, but was in fact useful for both cold fusion and other science and research.

Second, the Office systematically ignored my Declarants, and some of their own even when the Office's Declarant's wrote letters stating that the Office had misquoted them. The Office ignored Declarations and Exhibits proving utility, operability, and novelty and the fact that the invention is useful for both cold fusion and other purposes. The Offices' continual reference to "cold fusion", rather than each invention as described in each specification and claims, has been systematic prejudice. It has been only by the Office calling each invention "cold fusion" instead of a novel multiring calorimeter (or vibrating cathode to measure loading, etc.) that the Office can attack me and other inventors who dare to cite prior art involving cold fusion. Attention is directed to the fact that citing prior art was previously required before Mr. Behrend and the others changed the rules, requiring all patents to not contain the words 'cold fusion'. Such normal citations have been known generally, and for me specifically, to produce a standard, nonrelevant, boilerplate attack with old and yellowed press clippings and reference to poorly conducted and flawed premature studies from 1989. As the late Amicus Curiae Eugene F. Mallove, ScD stated before his unsolved murder, "*The most notable characteristic of the attack against the Swartz patent application at hand is its stale fixation with misrepresented events of 1989, its citation of erroneous reports, and its continued argument from supposed authority, rather than from evolved science and meticulous experiment.*"

9. On information and belief, Mr. Behrend acted behind the scenes until he actually "took over" all of my pending patent applications. Then, he falsely began, repeatedly and egregiously, claiming that there was "abandonment" (in federal documents), when there was none. The following are only a few examples of Mr. Behrend's vicious, unfair, and odious attacks. In my application Serial no. 09/568,728, I received a "Notice Of Abandonment", mailed 4/17/02, which stated that the application had been "*Abandoned*". However, this was false. I had submitted a Response to the Office's Action mailed 6/26/01. The datestamp of the Patent and Trademark Office indicated that the pleading was received at the Patent and Trademark Office on July 16, 2001. My pleadings were simply ignored by Mr. Behrend. They apparently were also egregiously removed from the file, perhaps by Mr. Behrend, who himself thereafter falsely checked off, "No reply has been received", when in fact it had, and had been recorded elsewhere. In fact, Mr.

Behrend knew there was also a Petition to the Commissioner in the file because it was received.

I notified the Commissioner of the improper behavior (called "dirty tricks" in other field). Despite my trust and confidence in the Commissioner, there was no response, except that Mr. Behrend, Mr. Carone and others were apparently given the "green light" to continue to remove more files, and to avoid responding to my remarks and comments.

10. As another example, in my No. 09/750,480 application, I received a "Notice Of Abandonment" dated 9/9/02 purporting incorrectly that the Application had been "*Abandoned*" because of a purported "failure to timely file a proper reply to the Office letter mailed on 16 January 2002". This was absolutely untrue. There was a Reply, and it was received by the Office. I had submitted a Response to the Office's Action which was dated 1/16/02 and was unsigned and unnumbered. The datestamp of the Patent and Trademark Office indicated that the pleading with said Exhibits was received and docketed 3/1/02. This indelibly demonstrates that there was no abandonment. I notified the Commissioner of the "dirty tricks" including removing files. Despite my trust and confidence in the Commissioner, there was no response, except that those acting nefariously were again given a proverbial "wink" to continue to remove more files, to fail to acknowledge Declarations and pleadings, and to avoid responding substantively to timely-submitted responses.

11. As yet another example, in my No. 09/573,381 application, I received a "Notice Of Abandonment" in August 2003 purporting incorrectly that my Application had been "*Abandoned*" because of a purported "failure to timely file a proper reply to the Office letter mailed on 10 October 2002". At the bottom was the stamp of Michael Carone; it was unsigned. This allegation of abandonment was absolutely untrue. There was a Reply, and it was received by the Office. Despite the false statements of the Office, I submitted a Response to the Office's Action, dated 10/24/02. The datestamp of the Patent and Trademark Office indicated that the pleading was received --and docketed-- 10/28/02. The datestamp of the Patent and Trademark Office indelibly demonstrates that there had never been any abandonment. Thereafter, I notified the Commissioner that further "dirty tricks" were continuing which included removing papers again. Despite my trust and confidence in the Commissioner, I was again ignored.

12. Mr. Behrend, or those associated with him, have used such 'dirty tricks' as standard operating procedure including apparently removing a figure from one patent. In several of his communications, Mr. Behrend has systematically attempted to coerce me into double patenting. He has routinely ignored my timely-submitted detailed substantive arguments, and has ignored those cited arguments previously made by the Examiner whom he suddenly replaced, prior to his systematic attacks and disingenuous statements used against me.

13. Mr. Behrend, Mr. Carone, and their agents have systematically and repeatedly ignored timely-submitted pleadings, arguments, Declarations and Evidence proving that they were wrong and that the inventions work as taught in the original specifications and claims. Even when confronted by written communications requesting normal process, they have refused to answer substantively. Most egregiously, in each case, all substantive, relevant, and cited arguments of the Declarants have been substantively ignored. On information and belief, Mr. Behrend in particular has ignored Declarations, evidence and apparently has destroyed, removed, mingled, or "lost" the submitted records. In Federal Court it has been revealed that these individuals conspired to failed to list several timely submitted relevant Declarations on their docket, later adding them as "1/2" numbers after a Complaint to the Federal Court.

14. To maintain their wrongful and odious behavior, nearly each statement by the Office has been self-serving, and usually wrong scientifically about what is "obtainable". For example, I publicly showed one of my cold fusion demonstration units (also including Application 10/646143) at the Massachusetts Institute of Technology [Cambridge, MA] in a public demonstration [ICCF-10, August 2003] before hundreds of scientists which lasted a week. The Patent Office was called and informed about this through its counsel Attorney Thomas Kraus. The Office elected to not even send one individual, despite being requested to do such. Instead of due diligence, the Office continued its attack against me. In contrast, the individuals who did show up and view the week-long performance of my cold fusion inventions were skilled-in-the-art and do wholly disagree with the erroneous unfounded opinion of the Office.

15. I also demonstrated one of my cold fusion demonstration units to Prof. Brian Josephson, Department of Physics, University of Cambridge (Nobel 1973, Physics). He was so impressed that he will be the opening speaker at ICCF-11 in France in November 2004. He wrote a letter to the Editor of the Independent (UK) about his visit and observations, regarding "'*Fusion alternative to fossil fuels' ...on a recent visit to the US I visited one, witnessing an apparently well-designed experiment where the heat energy output was some 40 per cent in excess of the energy put into the system. Total energy excess amounted to 48 kilojoules per cubic centimetre of electrode, an amount significantly greater than can be accounted for by any of the non-fusion mechanisms suggested by the sceptics.*"

16. In my pending patent applications, the record demonstrates that Mr. Behrend, Mr. Carone and their agents have been disingenuous in Office documents. For example, in these pending patent applications, the record demonstrates that the Office has falsely maintained that energy measurement and efficiency have no utility during a time of War. On the other hand, the Office has continued to issue frivolous and obvious non-operative patents such as using astrology to predict lottery numbers.

17. In my pending patent applications, the record demonstrates that there has been systematic discrimination, and the discriminatory use of two standards of review. Mr. Behrend, Mr. Carone and those under Commissioner Godici and their agents have been disingenuous in Office documents, have systematically ignored the Rules, ignored timely-submitted Declarations and Exhibits. This is systematic obstruction of justice.

18. In my pending patent applications, the record demonstrates that the Office has attacked me for daring to cite prior art (previously required before Mr. Behrend, Mr. Carone, and other under Commissioner Godici). Simply put, the record demonstrates that I have been the victim of systematic dirty tricks. I have shared the files in these cases with other patent Examiners and patent lawyers. It is their opinion that there does not appear to have been serious and substantive compliance by the Office with the Rules and Guidelines.

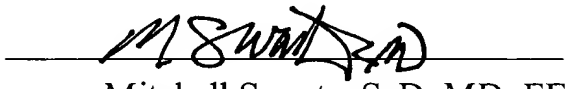
In place of compliance there have been disingenuous statements, "lost" checks, "lost" Declarations, "lost" pleadings, and "lost" Exhibits. These individuals have not been faithful to their own rules, to the US Constitution, and have instead acted with disingenuity as they have failed to respond to submitted pleadings, evidence and Declarations.

19. To make this saliently clear, a few examples are given above, but these are only the "tip of the iceberg" regarding the malicious and egregious actions of these individuals who have acted against myself, the American people, and the security of the United States of America for fifteen and half years since the crash of the *Exxon Valdez* and through two wars, where the United States of America needs energy and energy-related inventions. In the opinion and belief of many, they have helped, by their egregious behavior, the enemies of America rather than remaining faithful to the US Constitution and the directives of Congress. I can attest to the fact that in my patent applications in this field, unlike other fields where I also have patents issued, the Office has now rejected the controlling authority of Article I, Section 2, the notion of neutrality, and Equal protection under the law, but instead have created a dual-tiered system of review.

20. In my belief and opinion, in medicine or engineering or any other field of integrity, repeated disingenuity, inaccuracy, and failure to abide by a uniform code of regulations, would have led to sanctions and then removal of those people who continue such behavior and discrimination.

WHEREFORE for the above reasons, the Applicant (now Appellant) respectfully requests an investigation by the Inspector General into this matter.

Respectfully,



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